

IN THE
Supreme Court of the United States

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October Term, 1977

No. 77-109

**ERNEST CHARLES WILSON, VIOLET STEWART GOETCH-
IUS, MARY C. WILLIAMS and ROBERT B. FROST,**

Petitioners,

vs.

**JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O.
DOHENY, ENNIS MCGINLEY, BETTY B. LETTEAU,
FRIEDEL A. SCHRAMM JENSEN, GERALD A. GRIMES,
CHRIST CHURCH, UNITY, a California non-profit cor-
poration, and CHRIST UNITY MANOR, a California
non-profit corporation,**

Respondents.

**Petitioners' Brief in Reply to Opposition to
Petition for Writ of Certiorari.**

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PREFACE.

Petitioners are mindful of this Court's *Rule 24(4)* and this Reply Brief is addressed to the arguments first raised (expressly and impliedly) in respondents' opposition (hereinafter Opp.) to the Petition.¹

¹The Opp. was received by petitioners' attorney's office on September 7, 1977, while he was engaged then and on September 12 and 13 in other litigation; September 9 was a California legal holiday followed by the weekend without available secretarial and printing facilities. This brief was prepared immediately thereafter.

(The abbreviated references to the record, listed in the Petition (pp. 3-4, fn 2) will be followed. References to the Opp. pages will be by numbers in parentheses.)

Respondents continue their so-far successful tactic of misstating the record and distorting the perspective of the really simple issue (2-5) including the facts alleged in the complaint. Those facts are not arguable; they are admitted as true on demurrer, as a matter of law (Pet. 4). They are explicit and clear.

I

The Opposition.

1. Its "Questions Presented for Review" (2).

The statement of the alleged question presented (2) is incorrect and contrived to rationalize respondents' position. The involved breach of trust and breach of contract did not consist of Hinkle's and the other respondents' personal departure from doctrine, i.e., their diversion (change) of belief but upon their misappropriation, as trustees, of secular trust property and their misapplication thereof to a use other than its trust use. *The diversion referred to is not the diversion in belief but the diversion of property; that diversion is not ecclesiastical but secular.*

Respondents had the *absolute* right to change their beliefs but they related *duty* to *leave*. As trustees, if they could not, or would not, continue to discharge their voluntarily accepted trusteeship, they had only one choice, i.e., to properly withdraw (resign) from it.

2. Its "Statement of the Case".

Respondents' said tactic includes their *ipse dixit* (2), without record references, attributing "certain inaccuracies and misleading statements in the summary of the case" in the Pet.

That is untrue. Such technique is illogical and unworthy of this case. It makes specific response difficult *other than to refer to the record itself and to state that the Petition correctly states it.*

Respondents then deliberately misstate the record (2) particularly the complaint. For instance (2), that Wilson served from 1938 to 1965 implying he is no longer the founder-permanent minister on leave with the *contractual right to return at any time and resume his permanent ministry* (complaint 25); that Goetchius is "alleged" to be a general member and a member of the board (at the time the complaint was filed and until June 9, 1977); they refer to Hinkle as the "present minister" whereas he abandoned his ministry; a defrocked minister or one who has withdrawn and abandoned his ordination is no longer a minister. There is neither in ecclesiastical history nor in the civil law any authority for self-anointment, self-appointment or self-ordination. Ordination must come from established authority.² Petitioners correctly allege respondents' status; respondent corporations, the Church Corporation, Christ Church Unity, hereinafter Corporation and Christ Unity Manor, hereinafter Manor, are inter-locked in officers and the latter's temporalities are owned by the Church Corporation since the Church's trust assets and credit were utilized to acquire the manor. Respondents refer (3) to complaint 15 which alleges the properties were acquired in trust for the Church's Unity Ministry; this is not only the *fact* but is the California law. *Metropolitan Baptist Church of Richmond, Inc. v. Younger*, 48 CA3d 850, 121 CR 899; Pet. 16. Respondents then refer (3-4) to complaint 38 and 39. 38 alleges the *conspiracy between Hinkle and the other respondents to consummate Hinkle's plan of abandoning his Unity Ministry and*

²*Buttecali v. United States*, 130 F.2d 172; Pet. 19.

withdrawing as such to engage in his new activities and appropriating the Church and all its properties and to use them not for their trust purposes but to further and finance his new activities with an entirely different discipline of his own choosing. Complaint 39 (21 subparagraphs) and 40, 49 through 52, 54, 55, 57, 64 through 66, 68 through 70, allege the secular acts regarding the secular trust property in consummation of the conspiracy, only partially stated by respondents, including Hinkle's and respondents' misappropriation of the trust properties from the United Ministry into said different use.

The complaint allegations regarding Hinkle's and respondents' acts in consummation of said conspiracy are also explanatory and historical, the complaint stating fully the case background, Hinkle's violation of his ordination and employment, in concert with respondents, which led to the protests and complaints culminating in the ecclesiastical disciplinary proceedings.

The Petition (5-9) states a brief summary of the case squarely based upon the allegations of the complaint.

Respondents then state (4) petitioners "apparently claimed breach of contract," i.e., Hinkle's violation of the terms and conditions of his temporary employment during Wilson's leave of absence. First, there is nothing "apparently" about it; it was unequivocally alleged; second, the contract was evidenced in writing, also executed by Hinkle, Exhibit A of the complaint. *There is nothing ecclesiastical about that.*

Contracts by ministers and by trustees are binding as on any other lay person. *There is nothing ecclesiastical about violation of a contract whatever its object, or whether or not the services relate to ecclesiastical matters.*

Note there is not one word regarding the parsonage contract.

Respondents then state (4) petitioners' recovery "appears to be premised on allegations that respondent Hinkle's present ministry is not a Unity Ministry and does not adhere to Unity practice."

The complaint alleged Hinkle broadcast his abandonment of his Unity Ministry; his appropriation of the Church and its properties from its Unity Ministry and Unity trust purposes into his new activities.

3. Its "When Federal Question Was Raised".

Respondents here (5) refer to the sole ground of demurrer on which the Court of Appeal based its decision, i.e., its acceptance of respondents' contentions regarding *Hull*.³

They state (5) incidentally that the California Supreme Court denied a hearing (not, as they state, certiorari).⁴

Respondents hereunder inject their fictionally created "departure from doctrine" argument in order to justify their misapplication of *Hull*.

This action is secular as noted in the Petition and as is submitted to be obvious from the record.

The complaint (CT 1-46; OB 60-70) is captioned "Complaint for recovery of church, church properties and church corporation diverted from church trust purposes for which received, acquired and incorporated;

³*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969) 393 US 440.

⁴Denials of discretionary hearings by that Court do not add to the authority of the decisions of the Court of Appeal. Many factors enter the granting or denying of such petitions. They were clearly stated in "To Hear or Not to Hear," 3 *Stanford Law Review* 243-69 (1951); 4 *Stanford Law Review* 392-400 (1952).

breach of trust re church, church properties and church corporation; breach of contract, accounting; conspiracy to appropriate and divert church, church properties and church corporation from church trust purposes for which received, acquired and incorporated; damages." *There is nothing ecclesiastical about it.*

Respondents' demurrer stated (CT 137, lines 12-16) that the "... body of the Complaint and prayer for relief appear also to attempt to state a derivative action on behalf of the church corporation and to obtain specific enforcement of the contract, an injunction, relief for conversion of property, a declaratory judgment and quiet title to property." *Again, there is nothing secular about that description of the complaint.*

As noted in the record and the Petition *there is no question of interpretation or departure.* The complaint alleges Hinkle's and respondents' abandonment and withdrawal. *That is a secular fact.*

Respondents' RB, on the state appeal, (last paragraph p. 7) described their demurrer as follows: "The principal ground of demurrer was that the court had no jurisdiction over the action as the entire action was premised on interpretations of religious doctrine and requested court interference with religious practice."

That is untrue.

Nothing in the complaint requests the court to interfere with, or interpret, religious practice; all of it relates to recovery of trust property misappropriated from its trust purpose.

Respondents' silence regarding *Watson* and other authorities cited by petitioners, is eloquent.

Respondents tactically confuse the "departure from doctrine" concept, nonexistent in this case, with the *departure with property* by respondents in this case.

The *secular* corporations hold title to all the property; property is *secular*; the corporations were organized under the California Corporations Code and are *secular*. There is *nothing ecclesiastical* about being an officer, director or trustee of the corporations; or the real and personal properties including the trust contributions and donations to the Corporation for the Church; or constructing the manor; or changing the locks on the inner and outer doors of the Church to prevent the investigating committee to proceed under the ecclesiastical proceedings; or any of the other *secular* acts alleged in the complaint in pursuance of said conspiracy and partially stated in the Petition (5-9).

The complaint is to be judged by its substance and not by respondents' misinterpretation of its semantics.

Respondents' misuse of semantics makes "a mockery of language" as stated in *Chase v. Cheney*, 50 Ill 509, hereinafter *Chase*.⁵

A corporation is not ecclesiastical; neither it nor its officers and trustees can exercise any ecclesiastical authority; they have no ecclesiastical function. Such corporations are creatures of statute and their officers and trustees are governed by the statutes. Even ecclesiastical authority is not derived from supernatural or supra-legal sources but from contract between the organizing parties and those later voluntarily becoming members. *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 US 1, hereinafter *Gonzalez*.

There is a complete separation (as walled as the state and church and an extension of that separation) between the *ecclesiastical body* of the church (the congregation which contributes to and maintains it and worships in it in accordance with its specific doc-

⁵Cited in Pet. 18, 28.

trine and discipline) and the *corporation* which is completely secular and excluded from the ecclesiastical realm.

It has always been held by all the cases that in schisms those who adhere to the original doctrine of the church, for which the property was acquired in trust, are entitled to the property and to use it to that original doctrine.

That is the essence of justice.

Note that the Court of Appeal was completely silent as to *Watson* and other cases cited in the briefs and partially noted in the petition.

Corporations are legally qualified to hold property and to conduct business to the same extent as individuals. Corporations hold title in the corporate name and not in the name of any of its officers. Officers are employed by the corporation. They have no sovereignty, they cannot hold any corporate property rights separate from the employer corporation. Nor can any corporate officer own in his own name corporate property except, in imaginable unique circumstances, as agent either for a disclosed or undisclosed principal, or as trustee.

So this case turns on the secular Church Corporation (and its interlocking Manor corporation) and their secular officers and trustees who violated their trust duties and misappropriated the trust property.

Departure from doctrine or schism is a fact of life in many churches. The point is who determines the effect of it—ecclesiastically and secularly. In this case, any ecclesiastical differences were determined by the ecclesiastical authorities of USC and AUC, (and respondents' abandonment, withdrawal and misappropriation of trust property) not by any legislation and not by any secular person or secular act, including any civil court.

In their said RB 20, respondents stated that the cases⁶ petitioners cited "are inapplicable" in the light of *Hull* and *Serbian*.⁷ This meant *all* the cases appellants cited.

This really means a blanket erasure of all the accumulated wisdom and established principles enunciated by the great judges, state and federal, including by this Court. Such contention, tacitly approved by the subject decision, demonstrates the urgent reason for granting the Petition.

Unfortunately, church property controversies and litigation have proliferated since *Hull*.

Rather than a complete obliteration of all established principles as contended by respondents, this Court, post-*Hull*, has clearly indicated the case by case basis of the application of the First Amendment.⁸

Chief Justice Burger's comment, in a comparable regard, is worthy of note and significantly applicable on this point, i.e., in *Walz*, 397 US 678, quoting Justice Holmes in a cited case, "If a thing has been practiced for two hundred years by common consent,

⁶These include *Watson v. Jones*, *supra*; *Gonzalez v. Roman Catholic Archbishop of Manila*, *supra*; *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 US 94; *Late Corporation of the Church of . . . Latter Day Saints v. US*, 136 US 1; *Reynolds v. United States*, 98 US 145; *Davis v. Beesom*, 133 US 333; *Bouldin v. Alexander*, 15 Wall 131, 21 LEd 69; *Brundage v. Deardorf*, 55 F 839; *Roshi's Appeal*, 69 Pa 462; *Schnorr's Appeal*, 67 Pa 138; *Rosicrucian Fellowship, et al. v. Rosicrucian Fellowship, etc.*, et al., 39 C2d 121, 245 P2d 481, cert.den. 345 US 938; *Whipple v. Fehsenfeld*, 173 Kan. 427, 249 P2d 638, cert. den. 346 US 813, rhg.den. 346 US 918.

⁷*Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich*, 426 US 696.

⁸Examples are *Walz v. Tax Commission of the Church of New York* (1970) 397 US 664, and *Committee for Public Education and Religious Liberties v. Nyquist*, 413 US 756, and the distinct reservations and qualifications in both, particularly the various opinions in *Nyquist*.

it will need a strong case for the Fourteenth Amendment to affect it . . .” to which petitioners add *a fortiori* so regarding established principles, never questioned and consistently observed by *Hull* and *Serbian*.

Further, illustrating the fallacy of the simplistic and dogmatic statements by respondents regarding their interpretation of *Hull*, which would reduce the First Amendment to an inflexible and final definition, are Justice Burger's quotations in *Walz* of Justice Douglas, in a cited case, 397 US 669, “The First Amendment, however, does not say that in every and all respects there should be a separation of Church and State” and also Justice Harlan, in a cited case, same page, that the constitutional neutrality imposed on the Court “is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation.”

4. Its “Reasons for Denying the Writ”.

Respondents' total reliance (6-9) is on *Hull*. This consists of their discussion of *Hull* and partial, selected quotations, out of context (7-8).

This Court knows best its decision in *Hull* and its proper application. The selected, quoted portions do not apply in this case and are misleading as relating to the record of this case. For instance, civil courts *are* required to accept as a *fact* ecclesiastical determinations by ecclesiastical authorities and therefore such proper civil court action constitutes the civil court's assignment of that interpretation. In other words, the statement begs the question as applied in this case at bench.

It is not true that the Court would be required to consider whether what Hinkle practices is Unity or not since, as repeatedly noted, he abandoned his Unity Ministry, his ordination, and made and broad-

casted his departure from the said authority and his breach of his contract of employment, in the process of which he misappropriated the property.

Respondents state (9-11) that this Court reaffirmed its *Hull* decision in *Serbian*.

Again, this Court best knows its decision in *Serbian* and its proper application. Both *Hull* and *Serbian* were fully discussed by petitioners in their briefs and the Petition.

5. Its “The Decision Below Is Clearly Correct”.

Hereunder, again (11-12), respondents rely upon their contentions regarding *Hull* and *Serbian* and continue their tactic of misstating the record by the statement that if the Court of Appeal had reversed the judgment this case would have required a civil court to determine whether what Hinkle was now practicing was Unity or not.

This, of course, as repeatedly demonstrated, is *untrue*. Hinkle has himself stated that it is not Unity, having abandoned his ordination and purporting to remove the Church from Unity. Also, on the record that is irrelevant since the complaint is directed to the corporation and its officers and trustees, the trust and the trust property and respondents' violation of their legal and statutory duties as trustees.

Further, respondents' said statement is fictional and contrived. The explicit language in *Watson* regarding the misappropriation of church trust property correctly states the law.

The tactical objective of respondents' said technique is to becloud the simple issue that this is a secular trust case and presents the simple issue whether a trustee can breach his trust, for any reason, surrender his obligations as trustee but not surrender the trust

property entrusted to him in trust and on the contrary, appropriate it to a different use and crassly invoke the Religion Clauses of the First Amendment.

Conclusion.

The California law of corporations and trusts determines this case.

As noted in the Petition, respondent corporations are nonprofit, religious corporations, created and bound by the California Corporations Code as are its personnel. The trust status of those corporations, their trust properties and their trust personnel as well as the trust beneficiaries have been noted in the Petition.

The following California Civil Code sections are directly applicable. CC 2217 defines an involuntary trust as one "which is created by operation of law"; CC 2219 defines a trustee as "Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee" with a definition of the scope of the relationship; CC 2220 provides "*A trust in relation to real and personal property, or either of them, may be created for any purpose or purposes for which a contract may be made*"; CC 2221 provides for the creation of a voluntary trust by the trustor and beneficiary; CC 2222 provides for a voluntary trust created as to the trustee; CC 2223 defines an involuntary trustee as one who "wrongfully detains a thing" holding it in that capacity "for the benefit of the owner"; CC 2224 defines an involuntary trustee as "one who gains a thing by fraud (other stated means and) the violation of a trust, or other wrongful act . . ."; CC 2228 defines the trustee's obligation, i.e., "*. . . a trustee is bound to act in the highest good faith toward his beneficiary . . .*"; CC 2229 limits the authority of the trustee as to the use of the trust property as follows: "*A trustee may not use or*

deal with the trust property for his own benefit, or for any other purpose unconnected with the trust, in any manner"; CC 1573 defines a constructive trust as including "In any breach of duty which, without any actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him . . ."; CC 3523, codifies the basic equity maxim, i.e., "For every wrong there is a remedy."

A key point is whether an ecclesiastical authority has civil court remedy to enforce its ecclesiastical authority.

Also, whether a contract executed by a church corporation with its secular officers regarding secular property (the parsonage) and also such a contract similarly executed regarding the employment of a temporary minister (Hinkle) are unenforceable in civil courts because such corporation, or the minister (who is no longer ordained, having withdrawn from his ordination and who is additionally a secular officer of the corporation, which latter status is the only relevant status involved in this case) raise the First Amendment.

It is respectfully submitted the contention inherent in that statement approaches the inordinate.

There is no issue for any court to determine, through its civil proceedings, whether there was a departure from doctrine. The departure was an accomplished fact openly broadcast by Hinkle and respondents (and alleged in the complaint and admitted by the demurrer).

The constitutional vice is in the civil court's determination of an ecclesiastical issue, not its recognition of the accomplished fact.

The court in *Bomar v. Mt. Olive Missionary Baptist Church*, 92 CA 618, 268 P 665, 8 (Pet., Appendix K 19), quoted from *Nance v. Busby*, 91 Tenn 303, 18 SW 874,

“The bald question here is, Can a man or set of men, or a majority of the church organization, by chicanery, deceit and fraud, divert the property of the church organization to a purpose entirely foreign to the purposes of the organization, for their own selfish benefit, whether by the expulsion of members *or in any other fraudulent manner? Neither the law nor public policy will sustain such rule.* Fraud vitiates all transactions and, if members are expelled for a fraudulent purpose to carry out a fraudulent scheme, the expulsion is a void act, and of no force or effect whatever. *Equity will compel fair dealing, disregarding all forms and subterfuges, and looking only to the substance of things.*”

Watson also so held.

Petitioners respectfully pray that their Petition be granted.

Respectfully submitted,

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Attorney for Petitioners.